

STATEMENT OF HOWARD DUGOFF, ADMINISTRATOR
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
BEFORE THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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Good morning, Mr. Chairman. I am pleased to be here this morning to speak on behalf of the Department of Transportation concerning Title IV of S. 1108, the "Highway Safety Act of 1983," the "Hazardous Materials Transportation Act (HMTA) Amendments of 1983."

In my statement, I will make a number of suggestions for changes in emphasis or approach in specific provisions of the proposed legislation. I would like to emphasize strongly that these suggestions should not be construed as reflecting a negative view. We, in fact, support the purposes of Title IV entirely. We agree with the underlying analysis of the problems associated with hazardous materials transportation, and with the specific areas identified as warranting more effective government attention.

We are especially pleased to note the bill's explicit recognition of the need for national uniformity in hazardous materials transportation regulations and for Federal, State, and local government collaboration in regulatory implementation. We have ourselves for some time been working towards these ends.

In the discussions following, I will describe some of our previous and ongoing related efforts as I present the Department's views on the proposed bill. The discussion will be

organized according to three principal topics, the principal subjects of the proposed legislation: enforcement, training, and information.

Enforcement

The effectiveness of any safety regulatory program depends on the credibility of its enforcement mechanism. The Federal hazardous materials transportation safety enforcement effort is divided among several of the Department's operating administrations. The United States Coast Guard, Federal Aviation Administration, Federal Highway Administration, and Federal Railroad Administration bear jurisdictional responsibility for enforcement action relating to transportation of hazardous materials by water, air, highway, and rail, respectively; RSPA's enforcement staff places primary emphasis on enforcement of regulations for manufacturers, reconditioners, and retesters of DOT specification containers, and for multi-modal shippers of hazardous materials.

This decentralized approach to enforcement at the Federal level, involving frequent and close coordination among the enforcement teams of the modal administrations, has proven quite effective in practice. The vast numbers of highway carriers of hazardous materials, however, make it extremely difficult to assure acceptable levels of regulatory compliance.

The proposed Section 121 of the HMTA would attack the problem of inadequate enforcement of the hazardous materials regulations through an approach that we in the Department have advocated as well -- by increasing the involvement of state agencies and personnel in the inspection/enforcement effort. The underlying rationale for this approach is that, with a sound uniform body of safety standards, compliance can be

assured by properly trained enforcement personnel at any level of government. In order to encourage the states to assume an appropriate and effective role in hazardous materials transportation regulation and enforcement, RSPA in 1981 initiated a State Hazardous Materials Enforcement Development (SHMED) Program. By contractual agreements executed under SHMED, we furnish technical and financial support to states that have provided for adoption of the Federal hazardous materials transportation safety regulations. This assistance enables states to develop enforcement capabilities within existing public safety agencies (most commonly the highway patrol), thereby increasing total resources devoted to safety enforcement at a fraction of the cost that would be required to expand the Federal enforcement staff, and providing an incentive for state adoption of the Federal regulations leading to a uniform nationwide standard of safety. In 1982, the program was expanded from five to sixteen states; we plan a further expansion to 28 states in FY 1983 and 1984. Individual contracts with state participants are of three years' duration. Our funding assistance will peak in FY 1984, with decreasing amounts committed through FY 1987.

We are now working to phase the SHMED program participants into the new grant-in-aid program for motor carrier safety enforcement created by Section 402 of the Surface Transportation Assistance Act (STAA) of 1982. That legislation authorized the Department "to make grants to states for the development or implementation of programs for the enforcement of Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety." The Act defines "commercial vehicles" to include all vehicles, whether self-propelled or towed, that are used to transport hazardous materials in commerce. Thus the important objectives of proposed Section 121 are effectively addressed by the Commercial Vehicle Safety Grant Program authorized by the STAA and we are moving toward expeditious implementation of the STAA provisions. Accordingly, the proposed Section 121 grant program is not needed.

Training

A particularly important aspect of the national program to assure safety in the transportation of hazardous material is the provision of appropriate training to the public and private sector personnel who work in the field.

In analyzing the needs for hazardous materials training, and the proper governmental response to these needs, it is useful to note that the needs fall into three distinct, but related, categories.

The first category derives from the private sector. The commercial entities engaged in hazardous materials transportation seek training for their personnel on the practical requirements of the safety regulations and the most effective means of compliance. Such education enables them to prevent accidents and thereby avoid liability.

The second and third categories of hazardous materials training needs derive from the public sector. Training for inspectors and other government personnel at both the Federal and state levels is indispensable to assuring effective and consistent enforcement of the hazardous materials regulations. As the Department's ongoing efforts to encourage a more active state role come to fruition, demand for such training continues to grow at a substantial pace.

The final category of related training is for the state, and especially, local emergency service personnel, who must bear the burden of responding to the hazardous materials accidents that inevitably will occur.

Historically, the Department's primary response to hazardous materials training needs has been to support the delivery of formal training courses at our Transportation Safety Institute (TSI) in Oklahoma City, Oklahoma. Working closely with the TSI training staff, DOT subject matter experts have been able to provide high caliber training courses for Federal, state, local, and industry personnel. By combining home-study courses with classroom training and by seeking to "train the trainer" (i.e., training those who can return to their units and teach others), we have generally been able at least to satisfy what we consider to be our primary responsibility, for inspection and enforcement training.

EPA has also developed and delivered training for Federal, state, local, and private sector personnel on the topic of safe handling of hazardous substances in emergency response situations. Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), EPA and the U.S. Coast Guard share the responsibility for Federal response to hazardous substance emergencies.

Despite our best efforts, however, unsatisfied demands for training of those involved in hazardous materials transportation safety continue to grow. We believe that the proposed Section 120 of the HMTA, "Federal Training Programs for Incident Prevention and Response," is an entirely appropriate response to these demands, and that it represents a generally sound approach to improving and expanding safety training for shippers and carriers, inspection and enforcement personnel, and those responsible for emergency preparedness and response. The proposal is consistent not only with our views, but with the findings of numerous studies of hazardous materials safety needs by knowledgeable outside parties. We would strongly urge, however, that the proposed Section be modified to define more precisely the appropriate roles of DOT and FEMA, and to articulate explicitly the responsibility of shippers and carriers in providing safety and regulatory compliance training to their own personnel.

Under the Hazardous Materials Transportation Act, DOT's primary role is one of accident prevention through standard-setting and enforcement. Our major training effort, therefore, is directed at Federal and state enforcement personnel. FEMA, on the other hand, was created to provide a single focal point for all Federal emergency preparedness, mitigation, and response activities. FEMA is chartered to enhance Federal, state, and local resources devoted to preparing for and responding to the full range of emergencies. Since response to hazardous materials accidents is but one element of a larger capability to respond to emergencies in general, the role of DOT is limited to one of providing technical resource support.

For these reasons, we believe that the language in Section 120 should be amended to designate as DOT activities: evaluation of shipper/carrier and inspection/enforcement training programs; development of supplemental programs in these areas; response and removal activities in coastal areas under CERCLA; and related information dissemination activities. As to emergency preparedness/response counterpart activities, lead responsibility should be placed in FEMA with an express requirement for coordination with DOT. We would also suggest that there be an express recognition that shippers and carriers, not DOT or FEMA, are expected to carry the financial burden for delivering training to their personnel. We believe that, with the suggested amendments, Section 120 could serve as a vehicle for significantly improving coordination of the respective responsibilities of DOT and FEMA, and for generally enhancing the effectiveness of available hazardous materials safety training.

Paragraph (d) of Section 120 directs the Secretary of Transportation, to the extent practicable, to "establish or encourage the establishment of regional training centers." DOT maintains a training facility in Oklahoma City which provides training in inspection/enforcement on location and at prearranged sites around the nation. Analysis of

the Institute's training capacity indicates that it can meet all current requirements for Federal and state hazardous materials inspector training. We agree that a regional approach to training could be quite effective in reaching increased numbers of state, local, and industry personnel. We believe, however, that such an undertaking is best suited to a non-Federal initiative, ideally led by combinations of state and local governments with support from the private sector and Federal agencies such as FEMA and EPA, as well as DOT. We would therefore suggest that the language of Section 102(d) be amended to require that the Secretary of Transportation "encourage and support" the establishment of regional training centers rather than "establish or encourage" their establishment.

Information

Among the resources required to implement a successful hazardous materials safety program, none is more critical than basic information. In some circumstances, as in the case of on-site response to an emergency, the need for information is immediate. The Department has taken a number of important actions to satisfy such immediate needs. As required by the HMTA, an emergency response hotline has been established within the National Response Center operated by the U.S. Coast Guard. Through this service, state and local emergency response personnel can obtain real-time advice on dealing with an emergency. The center is data-linked to CHEMTREC, a service of the Chemical Manufacturers Association, which provides a centralized source of chemical emergency response information and assistance. Section 406 of S. 1108 would amend the HMTA to clarify the Secretary's authority to utilize this unique supplementary service, a measure we have requested in previous legislative proposals.

We have also developed an Emergency Response Guidebook (ERG) to assist those officials directly involved in responding to accidents. Linked to the mandatory identification system requiring vehicles to display a placard with the four-digit number identifying the hazardous material being transported, the ERG enables persons unfamiliar with chemical names to correctly identify the hazardous materials(s) involved and the correct safety measures to be taken immediately. Working with the International Association of Fire Chiefs, we have been able to place approximately 750,000 copies of the first edition of the ERG in the hands of civil defense agencies, police and fire departments and other public safety organizations throughout the country. A second edition of the ERG soon to be released will incorporate changes and innovations in hazardous materials technology which have occurred since the first edition was published.

While the National Response Center and the ERG provide immediate assistance during emergencies, they do not address another, equally important class of related information needs, namely, the needs of program and institutional planners for accurate and comprehensive data concerning the types and amounts of hazardous materials shipped through a particular jurisdiction, shipment frequency, modes of shipment, packaging specifications, and the like. Emergency preparedness planners at the community level, in particular, need such information to prepare for hazardous materials transportation emergencies -- to anticipate the kinds of accidents most likely to occur, the equipment necessary to respond, and the entity to which crisis management should be delegated. In an attempt to encourage this kind of activity, in 1980 we supported the proposal of a regional council of governments to examine hazardous materials transportation in its region and its current ability to respond to emergencies. This proved to be such a productive exercise that, in 1981, we initiated six emergency response demonstration projects. The participating organizations include state, county, regional, and municipal governments located in areas with different geography, demographics, and levels of

commercial activity. The results of these demonstrations will provide planning guides for communities all across the Nation. Last month the first public presentation of the results of these projects was made before the U.S. Conference of Mayors. This marked the start of what we intend to be an ongoing process of outward communication.

Notwithstanding these good beginning efforts, many local and state government, industry, and consumer associations remain critical of Federal emergency response assistance programs, especially because they do not adequately address the critical information needs. Feelings that the Federal government has not been sufficiently responsive have prompted many state and local governments to impose severe restrictions on hazardous materials traffic.

Section 122 of proposed Subtitle B of the HMTA attempts to address the shortcomings cited above by authorizing the Department to promulgate routing regulations and a system of prenotification. We do not believe the proposed approach would accomplish the purpose; in fact, the Department already possesses authority to promulgate such regulations under existing provisions of the HMTA.

Prenotification -- a system whereby a state or local government is notified by shippers and/or carriers in advance of shipments of hazardous materials to be moved through its jurisdiction -- is represented by its advocates as a method of improving the effectiveness of local enforcement and emergency preparedness activities. It is far from clear to us, however, that any form of local, state, or Federally mandated prenotification scheme will result in the necessary improvement. The logistical problems involved in implementing such a system would be immense, and preliminary analysis indicates that the cost of implementation, both to industry and state and local governments, would outweigh the potential benefits to emergency response programs.

We believe that there are more efficient and less costly methods of gathering information necessary to emergency response programs than prenotification. Some of these alternatives, such as surveying existing traffic volume and projecting traffic flow, are currently being demonstrated in the state and local pilot projects that I referred to earlier in my testimony.

Our view is similar regarding the proposed routing provision. We have long and publicly expressed our belief in the safety benefits of well-reasoned routing and other traffic control measures for hazardous materials transportation. Routing restrictions on hazardous materials traffic are a proper element of state and local government highway traffic control activities. To avoid placing unnecessary burdens on commerce and to be consistent with the Federal regulations, however, such restrictions must be adopted through a process that considers the impacts of the requirement on other jurisdictions and permits those jurisdictions to participate in the process. The requirement must have the effect of enhancing not only the safety of the citizens of the enacting jurisdiction, but overall public safety, as well. So long as state and local governments adhere to these principles when enacting routing regulations, rulemaking at the Federal level is unnecessary.

We believe that progress is being made, albeit slowly, in developing and disseminating the information needed by hazardous materials program planners and managers at all levels of government. There is clear evidence of increased communication among state and local officials; and between them and affected producers, users, and transporters of hazardous materials. Significant on the list of issues being addressed by this expanding network of concerned parties are the problems and conditions which are attacked, but usually not solved, by formally mandated "prenotification" and "routing" schemes.

Given these encouraging signs, we believe that the use of Federal rulemaking muscle should be held in abeyance pending a systematic analysis of information requirements. We believe that the time is now ripe to undertake a wide-scale examination of the potential sources and applications of information on hazardous materials transportation. Rather than focusing on rulemaking, we believe that greater benefits will derive from a comprehensive, cooperative effort to define the specific data requirements of concerned public and private sector entities, and to develop the most efficient and effective mechanisms for satisfying them.

Conclusion

In concluding my testimony today, I would like to restate the Department's wholehearted endorsement of the purposes underlying Title IV of S. 1108. Future enhancement of hazardous materials transportation safety cannot be achieved without a clear delineation of the rights and responsibilities of all parties concerned. Fortunately, the climate has never been better for the growth of Federal, state, local, and industry cooperation. Through the SHMED program and the newly-authorized motor carrier safety grant program, DOT is working with the states to assist them in taking a more active role in ensuring transportation safety. And, on their own initiative, state, local, and industry representatives have joined together to form a Hazardous Materials Transportation Coalition through which they can come to agreement on the effective balancing of competing demands.

Developments such as these demonstrate that there is no longer any significant opposition to the concept of national uniformity in hazardous materials transportation safety regulation. With coordination at an all-time high, and national uniformity

generally accepted as a regulatory goal, we believe that the hazardous materials transportation safety problems facing us today involve means rather than ends.

The desirability of a Federal/state/local partnership in hazardous materials transportation safety is beyond dispute. The mechanics of implementation, however, give rise to practical considerations of resource distribution which will require creative approaches. In our judgment, Title IV represents a timely and important step towards realizing such approaches. In this statement, we have raised questions concerning certain aspects of the proposed legislation, and made some general suggestions for modifications that we believe would strength it. We would very much welcome the opportunity to work with the Committee to develop these suggestions further and provide any other assistance you may desire.